



Submission to

**Food and Drink Marketing Consultation
Population Health Division, ACT Health**

on behalf of

Australian Association of National Advertisers

23 November 2015

Introduction

The AANA welcomes the opportunity to provide this submission to the Food and Drink Marketing Consultation, ACT Health.

The AANA is the peak body for advertisers and has represented national advertising for over 85 years. It represents the common interests and obligations of companies across all business sectors involved in the advertising, marketing and media industry.

The AANA has a strong ongoing commitment to self-regulation. The AANA designed and delivered the self-regulatory component of regulation controlling advertising and marketing communication in Australia.

The AANA's self-regulatory system applies to all media and virtually all forms of advertising and marketing communication. The AANA protects the rights of consumers by helping to ensure advertising and marketing communication is conducted responsibly, including through its development and administration of industry codes and the overall self-regulatory system.

The advertising, marketing and media industry plays a fundamental economic role in society and contributes approximately \$7.2 billion to the Australian economy annually¹.

It is the driver of consumer choice and, by promoting competition, helps consumers get better value for money. It enables innovation to be brought to market and stimulates economic growth and jobs. It provides substantial funding to support media and a variety of media content.

The AANA self-regulatory system

Self-regulation is an essential part of the Australian business landscape and contemporary society. It flourishes through strong leadership, commitment and cooperation across business, government and the community at large. While the AANA is responsible for developing and maintaining the overarching Codes, self-regulation is not the exclusive domain of any one particular body but the collective concern of many players, large and small.

The current self-regulatory system for advertising and marketing communication in Australia was established by the AANA in 1997. Its establishment was due to advertisers' recognition that they have a responsibility to deliver marketing that is aligned to community standards and expectations. The AANA system of self-regulation sits alongside and complements systems of regulation, co-regulation and self-regulation. Self-regulation of the advertising and marketing communication industry provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing community expectations.

The AANA self-regulatory system provides Codes that reflect community standards in relation to the regulation of advertising and marketing and have evolved following regular public consultation. The Codes are technology and platform neutral and provide a uniform set of self-regulatory standards for

¹ *Valuing Australia's Creative Industries*, December 2013 <http://livemusicoffice.com.au/wp-content/uploads/2015/07/CIIC-Valuing-Australias-Creative-Industries-2013.pdf>

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advertising and marketing communication.

Complaints about advertising are directed to the Advertising Standards Bureau which administers the operation of the independent adjudicators, who comprise the Advertising Standards Board².

Brand owners who are found in breach of the standards are required to remove or amend the relevant marketing material, irrespective of the platform.

The Code of Ethics is the cornerstone of the advertising self-regulatory system and is supplemented by a Code of Advertising and Marketing to Children, a Food & Beverages Code and an Environmental Claims Code.

In evolving and developing the AANA self-regulatory system, the AANA reflects brand owners' intent to continue to meet the community's expectations for ethical standards in advertising and marketing communications. The system is recognised and endorsed through inclusion in other self and co-regulatory systems, and all major media owners have agreed to support the decisions of the Advertising Standards Board.

Definition of advertising

In the AANA Codes, **Advertising or Marketing Communication** means *any material which is published or broadcast using any medium or any activity which is undertaken by, or on behalf of, an advertiser or marketer, and*

- *over which the advertiser or marketer has a reasonable degree of control, and*
- *that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.*

Medium is defined as *any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct to consumer media including new and emerging technologies.*

Platform neutral, national approach

The AANA Codes do not make a distinction between traditional media advertising, including outdoor advertising, and digital advertising. The definition of "Advertising or Marketing Communication" in the AANA Codes ensures virtually all commercial communication is captured (including third party comments – e.g. user-generated comment - on brand-owned social media sites). This means that the standards specified in the AANA Codes in relation to food and beverage marketing and marketing to children apply equally across all media.

The AANA recently announced a revised definition of "advertising or marketing communication" which will come into effect on 1 January 2016. The revised definition clarifies that direct-to-consumer public relations material is included in the definition of advertising and marketing communication and

² <https://adstandards.com.au/about>

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complaints about such communication will be assessed by the Advertising Standards Board.

The Codes will continue to evolve as new technology and means of communication evolve so that they remain relevant and universal.

The platform neutral self-regulatory model provides for the Advertising Standards Bureau to receive all complaints without the consumer having to consider the medium in which the relevant advertisement appeared.

When determining what combination of regulatory interventions might be needed in the future, it is important to respect the rights of brand owners to commercial free speech whilst fully respecting the rights of consumers and the broader community to expect marketing communication to reflect prevailing community standards.

Advertising to children

In the AANA Codes, *Advertising or Marketing Communications to Children* means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children...and are for goods, services and/or facilities which are targeted towards and have principal appeal to Children. **Children** means persons 14 years old or younger.

In addition to the requirements relating to food and beverage advertising discussed below, the AANA Codes require that advertising to children must not:

- mislead or deceive children;
- employ ambiguity or deceptive sense of urgency to buy the product;
- feature practices such as price minimisation (using “only” or “just”) which are inappropriate to the age of the intended audience;
- state or imply that a product makes children who own or enjoy it superior to their peers;
- undermine the authority, responsibility or judgment of parents or carers;
- contain an appeal to children to urge their parents, carers or another person to buy a product for them; or
- use popular personalities or celebrities to endorse, recommend or promote products in a manner that obscures the distinction between commercial promotions and program content.

These requirements align with those of the International Chamber of Commerce Code of Advertising Practice as well as codes in similar overseas jurisdictions such as New Zealand and the United Kingdom.

The Australian Food & Grocery Council Responsible Children’s Marketing Initiative and Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (AFGC Initiatives) provide an additional self-regulatory system for advertising and marketing to children for food and beverages promoted by signatory brand owners³. The AFGC Initiatives also apply to advertising or marketing communications directed primarily to children as well as advertising or marketing communication that are placed in a medium that is directed primarily to children and/or where children represent 35% or

³ <http://www.afgc.org.au/our-expertise/industry-codes/advertising-to-children/>

more of the relevant audience. These requirements align with those of the EU Pledge⁴ and International Food & Beverage Alliance Pledge⁵.

Heart Foundation ACT report

In its Snapshot of Food and Beverage Marketing to Children in the Australian Capital Territory (the Heart Foundation report), the Heart Foundation has used a unique definition of marketing. The Heart Foundation report defines marketing as “*any visual or audio message that publicises or promotes one or more unhealthy food or beverage products that could reasonably be expected to attract the attention of children (e.g. signage, posters, billboards, prominent branding/labelling (including on vending machines), product placements, sponsorships, radio broadcasts and cinema advertisements)*”.

The definition used in the report means that *any* marketing a child in the ACT *may see* is considered marketing to children and does not reflect the approach to advertising to children taken in Australia or internationally.

Under the AANA Codes, whether an advertisement or marketing communication is “directed primarily to children” is an objective test based on a range of factors. The application of the definition of “directed primarily to children” recognises that particular types of advertising and marketing communication engage and resonate with children in such a way as to bring about a response, reaction and action. As mentioned previously, the relevant age of the child for these purposes is 14 years old or younger.

The AANA believes there is an important distinction to be made between advertising directed primarily to children and advertising or marketing communication that may be seen by children, but is not directed primarily to them. Marketing communication which is directed to adults should not be subject to the same limitations.

The ACT Health consultation notice also recognises this distinction by addressing marketing being *aimed or targeted* at children. In not making this distinction, the Heart Foundation report inflates the volume of marketing material that it considers could influence children.

The Heart Foundation report also describes advertising to children as “persuasive”. However, it contains no research that the Heart Foundation has conducted on the causal effect of advertising or any significant link to obesity in children (or adults).

We note that the ACT Health consultation focussed on the marketing and promotion of food and drinks in local Canberra settings including, but not limited to:

- shopping centres and food retail outlets including supermarkets;
- cinemas and local radio;
- restaurants/cafes including quick-service outlets;

⁴ <http://www.eu-pledge.eu/>

⁵ <https://ifballiance.org/>

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- licensed clubs and hotels;
- sporting clubs and organisations; and
- ACT Government venues such as GIO Stadium, Manuka Oval and Exhibition Park.

The majority of this type of advertising falls within the industry category of “Out of Home” (OOH). The Outdoor Media Association (OMA) is the peak national industry body representing most of Australia’s OOH media display and media production companies, as well as some media display asset owners. The AANA supports the submission made by the OMA and notes that in 2014, the food and non-alcoholic beverages sector spent approximately \$55 million in the OOH market – 9.2% of all media revenue booked on OOH advertising across Australia. In a sector that is under pressure from competing media players, any ban or restriction on this advertising category would have a financial impact on industry business models and their ability to be competitive in market.

Additionally, targeted restrictions on advertising and sponsorship lack nuance and unfairly disadvantage sponsored organisations. Sponsorship restrictions may have a significant effect on sports, music and cultural events that otherwise struggle to source funding, along with a consequent impact on overall participation and potential price increases to cover costs. In contrast, continuing the ability for sponsored organisations to manage sponsorship practices is an opportunity to influence participants through appropriate health promotion programmes. A reduction in the ability to accept sponsorship will necessitate a funding program to reduce the impact of lost funds.

When dealing with an industry that operates across a range of media, and particularly where consumers can access the same or similar material across a range of platforms, it is an expensive burden on industry to impose different regulatory requirements depending on the media used, the product category or the geographical location of the material.

Level of concern regarding food & beverage advertising to children

An analysis of advertising complaints received by the Advertising Standards Bureau (ASB) against the AANA Codes in regards to food and beverage advertising directed to children shows a very low level of cases assessed and no breaches of the Codes in relation to food and beverage marketing directed to children in the past 5 years. The level of cases assessed by the Advertising Standards Board in relation to the advertising of food and beverages to children under the AANA Codes is less than 0.02% of total cases.

Similarly the volume of complaints to the ASB in relation to the AFGC Initiatives is very low with a total of 64 complaints in the last 5 years. Over the past three years, complaints in relation to the AFGC Initiatives have amounted to less than 1% of all complaints received by the ASB in each year. In contrast, the proportion of complaints over the same period in relation to discrimination or vilification; sex, sexuality and nudity; and violence have averaged 26.3%, 17.4% and 11.5% respectively.

Research conducted for the ASB in 2012 showed there is a high level of understanding within the community about the ability to make a complaint to the ASB.

The results of the 2014 audit in relation to the AFGC Initiatives demonstrate that instances of non-compliance are not due to companies endeavouring to target children with their advertising. The vast majority of complaint volume is in relation to the placement, rather than the content of advertising,

and the majority of issues in relation to placement stem from bonus spots and last minute decisions regarding the scheduling of movies or changes in programming, which were made without the knowledge of the advertiser. Notwithstanding the fact such instances are not commonplace, brand owners are in discussions with media planners and owners to try and minimise or eradicate such instances.

An Ipsos ASI survey of 500 parents in regards to consumer attitudes conducted on behalf of the AANA in 2012 revealed that the top influences on in-home purchasing decisions by parents for food are nutritional value (32%), price (26%) and taste (16%), rather than advertising.

The survey indicated that the community accepts that parents are the biggest influencer of children's diets and that factors which reduce physical exercise - such as concerns about children's safety when playing outdoors and the rise of sedentary pastimes, such as electronic games, are by far the most profound causes of the rising levels of obesity among children. The very strong view of the parents surveyed was that they accept and want responsibility for making health, nutrition and exercise decisions for their children and only one in four believed this should be shared with the Government.

Advertising of "unhealthy" foods

The Heart Foundation report classified food as "healthy" or "unhealthy" according to the classification used by the National Healthy School Canteens Guidelines. The AANA's concern with regard to the categorising of foods as healthy or unhealthy is that it ignores the role of the parent in determining the frequency and volume of food that their children consume. It is clear that most parents accept responsibility for making these decisions and there is no evidence to show that limiting the ability to advertise leads to a reduction in over-consumption.

Categorising food as "unhealthy" also makes no acknowledgement that it is the over-consumption of some foods, combined with a lack of physical activity, which creates a level of unhealthiness and that foods which are considered "treats" can be enjoyed on an occasional basis without creating any health problems. There is a misconception that high levels of obesity are attributable to bad foods, rather than bad diets. Regulating particular foods, or the advertising of those foods, ignores the reality that there is a need to focus on diet and consumption, along with encouraging people to be more active through reducing sedentary activity if there is to be a significant impact on the problem.

Rather than categorising food, the AANA Codes address the key issues of consumption and activity. The AANA Food & Beverages Advertising & Marketing Communications Code specifically requires that advertising and marketing of food and beverages must not *"undermine the importance of healthy or active lifestyles nor undermine the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption..."*.

Similarly the AFGC Initiatives provide that signatory advertisers must represent healthier dietary choices in advertising or marketing communications to children. In addition the representation must reference, or be in the context of, a healthy lifestyle, designed to appeal to children through messaging that encourages good dietary habits and physical activity.

The AANA Codes also recognise that there are other means of encouraging greater consumption of a particular product and require that advertising and marketing must not state or imply that possession or use of a particular children's food or beverage product will afford physical, social or psychological

advantage over other children, or that non-possession of the product would have the opposite effect. These requirements, combined with the other limitations on advertising to children that exist in the AANA Codes, appropriately guide responsible marketing of food and beverages to children.

Impact of advertising of “unhealthy foods” and consumption on obesity

The recent UK *Literature Review of Research on Online Food and Beverage Marketing to Children*⁶, notes that the evidence from research on the relationship between food marketing and childhood obesity is not conclusive and, despite claims that there is an emerging consensus on a relationship existing, reviewers of the research disagree in their overall conclusions. The review notes that some evidence is correlational but generally fails to establish causal relationships between exposure to advertising and phenomena like obesity, explaining that much of the research measures children’s reported exposure to media rather than their exposure to advertising specifically.

This is problematic as there are many possible ways in which media use might be associated with obesity, for example, watching television and surfing the internet are sedentary activities, which do not burn many calories. In addition, people who spend a lot of time in front of a screen tend to exercise less and are more likely to prefer other sedentary activities.

Similarly, recent research in the United States by Cornell University Food and Brand Lab indicates that “soda, candy and fast food” are not likely to be a leading cause of obesity⁷. The research reviewed a nationally representative sample of adults in the United States and found that, except for the 5% of the population at the extreme ends of the BMI range, that is, “chronically underweight” and “extremely morbidly obese”, consumption of soda, candy and fast food is not linked to Body Mass Index (BMI) for 95% of the population. The consumption of those foods and beverages was not significantly different between the habits of healthy weight and overweight individuals.

The researchers state that “...just because those things can lead you to get fat doesn’t mean that’s what is making us fat. By targeting just these vilified foods, we are creating policies that are not just highly ineffective, but may be self-defeating as it distracts from the real underlying causes of obesity.”

Empowering consumers through education to drive motivation and providing information to guide choice is the key to healthy eating. Advertising has a role to play, and can be very effective, in providing information and choice for consumers. Ultimately consumers decide what to eat, and so are responsible for their diets, and indeed other lifestyle behaviours which can have positive and negative effects on health. Policies which result in better education and better information for consumers, including via advertising, are likely to be the most effective in bringing about a change in consumer diet and activity levels.

⁶<https://www.cap.org.uk/News-reports/Media-Centre/2015/~media/Files/CAP/Reports%20and%20surveys/Family%20Kids%20and%20Youth%20Literature%20Review%20of%20Research%20on%20Online%20Food%20and%20Beverage%20Marketing%20to%20Children.ashx>

⁷ http://foodpsychology.cornell.edu/OP/fast_food_science

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As the UK review notes, the regulation of advertising self-evidently needs to keep pace with the times. Yet we also need to consider whether there is a clear rationale to increase commercial and regulatory burden on the advertising industry when there is no substantive evidence to show that advertising causes health problems and when there is recognition from the community that the drivers of obesity are over consumption and modern lifestyle factors. It is vital to consider the potential negative impacts and unintended consequences of increasing regulation and to weigh the costs against the potential benefits.